IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINENTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 17130 of 2004

Between:

Suraj Kumar, S/o. Ashok Kumar, Hindu,
R/o. CISF Unit Lines, NRSA, Shadnagar, Annaram Post,
Mahaboob Nagar District.

..... PETITIONER

AND

1 The Assistant Commandant, Central Industrial Security Force,
Ministry of Home Affairs, NRSA, Balanagar, Hyderabad - 37.
2 The Group Commandant, Central Insutrial Security Force,
Ministry of Home Affairs, CISF Group Head Quarters, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue Writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in ordering the enquiry under Rule 36 of CISF Rules vide Proceedings No. V-15014/CISF/GHH/SK/2004/3754, dated 13-09-2004 while setting-aside the punishment order in proceedings No.V-15014/CISF/NNRSA(B)/SK/ Minor/2004/1369, dt. 17-6-2004 of the 1st Respondent even though, same has become final and no appeal is preferred by the petitioner under Rule 52(2) (c) of CISF Rules, 2001 Vide Proceedings No. 11015/CISF/GHH/SK/2004/3692, dt. 07-09-2004 of the 2nd Respondent as illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and quash the same.

Counsel for the Petitioner:MR.J.M.NAIDU

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

The Court made the following :

ORDER:

Challenging the action of the second respondent in ordering enquiry against the petitioner under Rule 36 of Central Industrial Security Force Rules, 2001 dated 13.09.2004 while setting aside the punishment order dated 17.06.2004 of the first respondent and the consequential proceedings issued by the second respondent dated 13.09.2004 as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for disposal of the writ petition may be stated as follows:

A charge sheet has been issued to the petitioner calling for his explanation and the petitioner gave an explanation. As the explanation was not satisfactory, the disciplinary authority imposed a penalty of withholding of one increment for a period of three years, which will not have effect of postponing his future increments of pay vide proceedings dated 17.06.2004. It is further stated that the second respondent, without there being appeal, in exercise of powers under Rule 52 of the CISF Rules, set aside the punishment and ordered enquiry to deal with Rule 36 of the rules. Therefore, the said procedure is contrary to the provisions. Hence this writ petition.

The respondent filed the counter. It is stated that the second respondent is the competent authority to revise the punishment as the punishment awarded by the first respondent is not commensurate with the gravity of offence committed by him and accordingly the second respondent, while exercising the powers under Rule 54 of the Rules set aside the punishment awarded by the first respondent and ordered for fresh enquiry. Therefore, the order under challenge does not suffer from any legal infirmities so as to call for interference of this Court.

The learned counsel for the petitioner vehemently contended that the order passed by the first respondent has become final and no appeal has been preferred by the petitioner and the second respondent, being the appellate authority, has no power to exercise suo moto powers unless an appeal has been filed by the parties concerned. He further contended that by the order dated 07.09.2004, the petitioner will be deprived of his right of appeal to the appellate authority in case the enquiry is conducted by the appellate authority. Hence he prays to allow the writ petition.

On the other hand, learned Standing Counsel appearing for the respondents contended that the provision as quoted in the impugned proceedings i.e., Rules 52(2) (c) of the Rules is a wrong provision. The second respondent exercised the revisional powers under Rule 54 of the Rules and set aside the punishment imposed by the disciplinary authority and the same does not suffer from legal infirmities. He further contended that as per the proviso to Rule 54, the petitioner can as well offer his explanation for the proposed penalty. Hence he prays to dismiss the writ petition.

The factual matrix is not seriously disputed before this Court. The first respondent, by virtue of his order dated 17.06.2004 awarded punishment of withholding of one increment for a period of three years, which will not have the effect of postponing the future increments in the pay of the petitioner. According to the petitioner, the same has become final. But, the second respondent in his proceedings dated 07.09.2004 having come to the conclusion that awarding of punishment leniently for his grave misconduct does not commensurate with the gravity of the offence committed, set aside the proceedings of the first respondent 17.06.2004 under rule 37 of the Rules and ordered for an enquiry directing the petitioner to submit his written explanation by framing an article of charges. The said proceedings are under challenge in this writ petition.

I have perused the material available on record and the relevant provisions.

A perusal of Rule 52(2) (c) of the Rules shows that in case of an appeal, against an order of suspension, the appellate authority can modify, enhance, confirm or remit the case to the authority who imposed the sentence. Admittedly, no appeal has been preferred by the petitioner. Therefore, under the said provision, the second respondent cannot set aside or revise the order passed by the first respondent. But at the same time, quoting the wrong provision is not a ground itself to set aside the impugned order.

In the counter affidavit it is made clear that the said order has been passed under Rule 54 of the Rules, which reads as follows:

> " Any authority superior to the authority making the order may either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, and may-
>
> a. confirm, modify or set aside the order;

b. confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

c. remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

d. pass such order as it may deem fit within six months of the date of communication of the order propose to be revised.

So the above provision makes it clear that the second respondent, who is the appellate authority, can suo moto revise or set aside the order passed by the lower authority. So, Rule 54 of the rules is the source of power conferred on the second respondent to suo moto set aside the punishment order. Therefore, the action of the 2nd respondent does not suffer from any legal infirmities so as to call for interference of this court.

The other contention raised by the learned counsel for the petitioner is that if the enquiry is conducted by the second
respondent, the petitioner will be deprived of his right of appeal.

On the other hand, the learned standing counsel for the Central Government contended that as per the proviso to Rule 54 of the Rules, the petitioner can as well make a representation. Rule 52 (2) (c) of the Rules has no application in case of a suo moto enquiry to be conducted by the second respondent. It is further submitted that in case of proposing to impose major penalty, the second respondent can call for explanation from the petitioner as per the proviso to Rule 54.

If the enquiry is to be conducted by the second respondent, definitely the petitioner will loose right of appeal to the second respondent. It is not in dispute before this Court that the second respondent is the appellate authority over the first respondent. Therefore, in all fitness of things the enquiry has to be conducted by the first respondent. As per the proceedings of the second respondent dated 13.09.2004, the petitioner has complied with Rule 36 of the Rules. Rule 36 of the Rules provides the manner for conducting enquiry by the disciplinary authority, but not by the appellate authority. Therefore, the appellate authority has no power to conduct the enquiry under Rule 36.

But, in the instant case, invoking the powers conferred under Rule 54 of the Rules, the 2nd respondent has suomoto called for the explanation of the petitioner and

therefore, the procedure adopted under rule 36 of the Rules cannot be an impediment for the 2nd respondent to proceed against the petitioner under Rule 54 of the Rules. Hence, the proceedings of the second respondent dated 07.09.2004 does not suffer from any legal infirmities so as to call for interference of this Court.

However, in the facts and circumstances of the case and rules and regulations as contemplated under the Rules and in order to resolve the controversy between the parties, I am of the view that in so far as the proceedings of the second respondent dated 13.09.2004 are concerned, they are liable to be set aside with a liberty to the first respondent to conduct the enquiry afresh in accordance with the procedure as contemplated under the rules.

The writ petition is accordingly disposed of. No costs.

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09.06.2005

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To

1 The Assistant Commandant, Central Industrial Security Force,
Ministry of Home Affairs, NRSA, Balanagar, Hyderabad - 37.
2 The Group Commandant, Central Insutrial Security Force,
Ministry of Home Affairs, CISF Group Head Quarters, Hyderabad.

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